**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE R.BASANT**

**THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929**

**Crl.MC.No. 3651 of 2007**
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**(CRIME NO. 130/1998 OF PAVARATTY POLICE STATION)**
**.....**

**PETITIONER/ ACCUSED:**
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**BABU, S/O. KRISHNAN,**
**PARANGANATT VEETTIL, ELAVALLY VILLAGE, DESOM,**
**CHAVAKKAD TALUK, THRISSUR DISTRICT.**

**BY ADV. SRI.RAJIT.**

**RESPONDENT/ STATE:**
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**STATE OF KERALA, REP. BY**
**PUBLIC PROSECUTOR, HIGH COURT OF KERALA,**
**ERNAKULAM.**

**BY PUBLIC PROSECUTOR SRI. M.S. BREEZ.**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/12/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**R. BASANT, J.**

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Crl.M.C.No. 3651 of 2007

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Dated this the 6th day of December, 2007

**O R D E R**

The petitioner is one of the accused and he faces indictment in a prosecution for offences punishable, inter alia, under Section3(1)(xi) of the SC/ST (Prevention of Atrocities) Act and Section 452 r/w. 149 I.P.C. The case is now pending before the Sessions Court. The petitioner was not available for trial. Co-accused, who are available for trial were tried, found not guilty and acquitted. As the petitioner was not available, reckoning him as absconding, the case against him has been split up and is continuing to be pending. Coercive processes issued against the petitioner by the learned Sessions Judge are chasing him.

2. According to the petitioner he is absolutely innocent. His failure/omission to appear earlier was not wilful, but was due to reasons beyond his control. He is willing to surrender before the learned Magistrate, but he apprehends that his application for

bail may not be considered by the learned Judge on merits, in accordance with law and expeditiously. It is in these circumstances prayed that appropriate directions may be issued to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Sessions Judge and explain to the learned Judge the circumstances under which he could not earlier appear before the learned Judge. I have no reason to assume that the learned Sessions Judge would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Judge, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Sessions Judge and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Judge

must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. The learned counsel for the petitioner submits that some of the offences are compoundable and the defacto complainant has already compounded the offences alleged against him. The petitioner makes a further request that there may be a direction for expeditious disposal of the case. The petitioner is employed abroad and he is obliged to return to his place of employment in January, 2008. In these circumstances a lenient view may be taken and the trial may be completed as expeditiously as possible to enable the petitioner to return to his place of work, submits the counsel.

6. The request coming at a time when the petitioner had not even entered appearance is interesting. But the plight of the petitioner deserves consideration. He can make a request to the learned Sessions Judge for out of turn disposal of the case. The learned Sessions Judge must consider such request and pass appropriate orders on merits. The petitioner can apply for composition of the compoundable offences. He can also urge at the stage of S.227/228 Cr.P.C. that no charges are

liable to be framed against him for the non-compoundable offences, in the light of the decision in the trial against the co-accused. The learned Sessions Judge must consider the plea of discharge and if that is not acceptable, claim for acquittal as expeditiously as possible.

**(R. BASANT)**
Judge

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